

January 16, 2015

PUBLIC VERSION

Via Email and Hand Deliver

Ms. Lisa Saks
Ms. Lisa Boehley
Market Dispute Resolution Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20054

RE: *In the Matter of Worldcall Interconnect, Inc. a/k/a Evolve Broadband, Complainant v. AT&T Mobility, LLC, Defendant*, File No. EB-14-MD-011 – Response to Objections.

Dear Ms. Saks and Ms. Boehley:

Worldcall Interconnect, Inc. (“WCX”) hereby submits for filing the Confidential/Highly Confidential versions of its Response to Counterparties’ Objections to Production of Roaming Agreements (“the Response”) in the above-captioned complaint proceeding. WCX requests confidential and highly confidential treatment of certain information contained in the Response, submitted pursuant to 47 C.F.R. §§ 1.726, 1.731, and the protective order entered in this proceeding.

WCX provides justification for the Confidential/Highly Confidential treatment of the Response in the Appendix to this letter, pursuant to 47 C.F.R. §§ 0.457 and 0.459. In accordance with 47 C.F.R. § 1.731(b), WCX agrees that the Confidential/Highly Confidential information in the Response may be disclosed to the persons listed in this subsection, including counsel of record for Defendant, to the extent necessary solely for the purpose of this action.

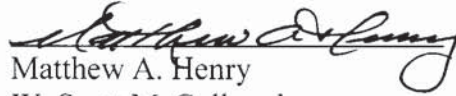
WCX is simultaneously submitting, under separate covers, a non-redacted (highly confidential), a partially-redacted (confidential), and a redacted version of the Response. The non-redacted and partially-redacted versions of the Response are marked “DO NOT RELEASE, NOT FOR INCLUSION IN THE PUBLIC RECORD” and “Confidential/Highly Confidential Information included pursuant to Protective Order, *Worldcall Interconnect, Inc. v. AT&T Mobility, LLC*, File No. EB-14-MD-011.” The fully redacted version of the Response is marked “PUBLIC VERSION.” All versions of the Response are the same except that, in the partially-redacted version, the highly confidential information has been omitted and, in the public version, the confidential and highly confidential information has been omitted. This cover letter does not contain any confidential/highly confidential information.

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WCX is simultaneously delivering two courtesy copies of the Response (non-redacted, highly confidential) to Market Disputes Resolution Division staff via hand delivery.

Please do not hesitate to contact us with any questions using the information in the letterhead.

Respectfully,



Matthew A. Henry
W. Scott McCollough
McCollough Henry, PC
1250 S. Capital of Texas Hwy, Bldg 2-235
West Lake Hills, TX 78746
henry@dotlaw.biz
wsmc@dotlaw.biz
Tel: 512.888.1114
Fax: 512.692.2522

Counsel for Worldcall Interconnect, Inc.

Enclosures

Copy to (via email and U.S. Mail)

James F. Bendernagel, Jr.
David L. Lawson
Paul Zidlicky
Thomas E. Ross.
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

PUBLIC VERSION

APPENDIX

Confidentiality Request and Justification

WCX requests confidential and highly confidential treatment of specific information contained in the Response associated with this correspondence. In accordance with 47 C.F.R. § 0.459(b) and in support of its request, WCX provides the following information:

47 C.F.R. § 0.457(d)

WCX reasonably believes that AT&T and Sagebrush Cellular, Inc. consider certain information contained in the Response is confidential and/or highly confidential and proprietary to AT&T as “commercial information” not routinely available for public inspection or is otherwise confidential under Section 0.457(d). These materials constitute characterizations of the terms of AT&T contracts with third parties, including Sagebrush Cellular. AT&T and Sagebrush Cellular have marked this information confidential/highly confidential in prior pleadings and must be accorded confidential treatment until any potential challenge to those designations is resolved. Therefore, in the normal course of Commission practice, this material should be considered “Records not routinely available for public inspection.”

47 C.F.R. § 0.459

Specific information included in WCX’s Response is also subject to protection under 47 C.F.R. § 0.459, as demonstrated below.

Information for which confidential treatment is sought

WCX requests confidential treatment of specific information contained in parts of the Response as containing confidential and/or highly confidential information. The confidential and/or highly confidential information includes characterizations of the terms of AT&T contracts with third parties. The information is identified as confidential/highly confidential when it appears within the submission, and pages containing confidential information have been marked pursuant to the October 9, 2014 order and the protective order in place in this proceeding: “DO NOT RELEASE, NOT FOR INCLUSION IN THE PUBLIC RECORD.” Consistent with the protective order, the material marked as protected also includes a legend designating the material as confidential.

Commission proceeding in which the information was submitted

The information is being submitted in *In the Matter of Worldcall Interconnect, Inc. a/k/a Evolve Broadband, Complainant v. AT&T Mobility, LLC, Defendant*, File No. EB-14-MD-011.

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

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The material designated as confidential contains sensitive commercial information of defendant that WCX maintains as confidential. It includes characterizations of the terms of confidential contracts with third parties. The Response also contains discussion of information that the defendant marked confidential/highly confidential and must be accorded confidential treatment.

Degree to which the information concerns a service that is subject to competition

The confidential/highly confidential information that WCX seeks to protect is related to its provision of mobile wireless services. The mobile wireless industry is somewhat competitive.

How disclosure of the information could result in substantial competitive harm

WCX reasonably believes that AT&T and Sagebrush Cellular believe that disclosure of the confidential information would result in substantial competitive harm because it would give competitors insight and access to contract terms.

Identification of any measures taken by the submitting party to prevent unauthorized disclosure

WCX has treated and treats the information disclosed in this material as confidential and/or highly confidential and has protected it from public disclosure to parties (other than Defendant and the Commission) outside of the company.

Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties

WCX believes that the designated information had not been previously made available to the public or provided to third parties (other than the Defendant and the Commission now).

Justification of the period during which the submitting party asserts that material should not be available for public disclosure

WCX cannot determine at this time any date on which this material should not be considered confidential/highly confidential or would become stale for purposes of the current action. Therefore, the information should be treated as confidential/highly confidential indefinitely.

Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted

Under applicable Commission and court rulings, the material in question should be withheld from public disclosure. Exemption 4 of the Freedom of Information Act, 5. U.S.C. § 552(b)(4), shields commercial or financial information.

PUBLIC VERSION

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
WORLDCALL INTERCONNECT, INC.)	
a/k/a EVOLVE BROADBAND,)	
Complainant)	File No. EB-14-MD-011
)	
v.)	
)	
AT&T MOBILITY LLC)	
Defendant)	

**RESPONSE TO COUNTERPARTIES' OBJECTIONS TO PRODUCTION OF
ROAMING AGREEMENTS**

Matthew A. Henry
henry@dotlaw.biz
W. Scott McCollough
wsmc@dotlaw.biz
McCollough|Henry PC
1250 S. Capital of Texas Hwy, Bldg 2-235
West Lake Hills, TX 78746
Tel: 512.888.1114
Fax: 512.692.2522

Counsel for Worldcall Interconnect, Inc.

January 16, 2015

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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WORLDCALL INTERCONNECT, INC.)	
a/k/a EVOLVE BROADBAND,)	
Complainant)	File No. EB-14-MD-011
)	
v.)	
)	
AT&T MOBILITY LLC)	
Defendant)	

**RESPONSE TO COUNTERPARTIES' OBJECTIONS TO PRODUCTION OF
ROAMING AGREEMENTS**

Worldcall Interconnect, Inc. ("WCX"), by its attorneys, hereby submits this response to the objections to production of roaming agreements submitted by Commnet Wireless, LLC ("Commnet"), Sagebrush Cellular, Inc. ("Sagebrush"), and Cellular Properties, Inc. ("Cellular Properties") (collectively, "the counterparties"). Out of the dozens of carriers with whom AT&T has entered into roaming agreements, just these three carriers have objected to the production of their agreements. These counterparties have objected on two grounds; relevance and potential harm. For the reasons shown herein, both grounds fail and a fair balancing of the interests requires the full production of each roaming agreement.

I. The counterparties have not met the standards for nondisclosure.

The Commission has broad power to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 47 U.S.C. § 154(j); *FCC v Schrieber*, 381 U.S. 279, 290 (1965). The Commission has long used protective orders to protect confidential information while conducting its proceedings. *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc.*, Order on Reconsideration, MB Docket No. 14-57,

2014 FCC LEXIS 4109 (FCC 2014), ¶22 (“[T]he Commission’s protective orders ... are based on years of Commission experience and represent a time-tested means to protect highly sensitive information, including that of parties not directly involved in a transaction under review.”). The counterparties have not sufficiently demonstrated that they should be excused from the Commission’s standard procedures and that this complaint should be tried on an incomplete record. These roaming agreements should be produced on a confidential basis, subject to the proceeding’s protective order, so that the Commission and WCX can assess certain claims and characterizations made by AT&T. Granting the objections would allow AT&T to use the withheld agreements as a sword, but also simultaneously use the nondisclosure as a shield against any ability to evaluate AT&T’s claims. Withholding the documents would violate WCX’s due process rights.

Each counterparty was required to support its claim of confidentiality with “a detailed description of the contents of the withheld material and of the reasons for nondisclosure, correlating specific FOIA exemptions with relevant portions of the withheld material[.]” *In the Matter of ITT World Communications Inc., et al.*, 85 F.C.C.2d 916, 920 (1981); *Orion Research v. EPA*, 615 F. 2d 551, 553 (1st Cir. 1980). None of the three counterparties has done so and the objections fall short of meeting their burden.

II. The counterparties’ roaming agreements are highly relevant to this proceeding because AT&T heavily relies on them to “prove” its case and the Commission has recognized that existing roaming agreements are relevant to this type of complaint proceeding.

Commnet and Sagebrush have both objected to the production of their roaming agreements on relevance grounds. According to Commnet, its roaming agreement “has no probative value in this proceeding” because “Commnet is not similarly situated to WCX.” Commnet Objection, pp. 3-4. Commnet claims that it has negotiated a “global agreement” that

would not be appropriate for WCX. *Id.* Similarly, Sagebrush argues that its specific market is so unique that its roaming agreement “cannot serve as a reasonably proxy of a commercially reasonable roaming agreement in the context of the WCX/AT&T relationship.” Sagebrush Objection, pp. 2-3.

A. AT&T asserts that the counterparties’ roaming agreements are relevant to WCX’s claims and indicative of commercially reasonable terms and rates.

The counterparties misunderstand the context of this case. WCX agrees with Commnet and Sagebrush that the specifics of these agreements’ terms might not be suitable for other requesting carriers. To the extent they incorporate the terms offered to WCX, they are not reasonable given WCX’s specific circumstances, which more than likely do differ from the objecting carriers’ situations. But AT&T claims these roaming agreements (and all its others) are relevant, indeed determinative for this case. According to AT&T, its roaming agreements are all similar to those offered to WCX, and the fact that others have accepted those terms proves that it has offered commercially reasonable rates and terms to WCX. *See e.g.*, Answer, p. 2 (“AT&T’s proposed rates are consistent with other marketplace agreements and are therefore commercially reasonable.”); ¶43 (“AT&T’s proposed agreement has been used in numerous transactions with a host of different providers and, as such, the terms and conditions of these agreements are presumed by the Commission to be commercially reasonable.”). AT&T argues that WCX’s unique circumstances are largely irrelevant and that WCX should be limited to the terms that other requesting carriers have adopted. WCX has steadfastly opposed this position and argued that its own unique circumstances warrant individualized rates and terms.

However, for so long as AT&T’s primary position in this case remains that its existing roaming agreements establish commercial reasonableness, then they are highly relevant to the resolution of this complaint. These agreements are central to a meaningful assessment of

AT&T's position, for both WCX and the Commission. Since AT&T raised the issue, WCX has a due process right to obtain all of the agreements, in their entirety, because otherwise it will not be able to confront vital evidence and rebut AT&T's contentions or press its own claims in an informed manner. WCX must be allowed to fully investigate AT&T's assertions about its other roaming agreements.

This complaint case is an adjudication. Under 5 U.S.C. §554(c)(1), WCX has the right to obtain and submit for Commission consideration all relevant facts and arguments, and also must be given the opportunity to discover all relevant facts that are necessary to rebut and respond to AT&T's case. WCX has the right to discover information that will allow it to fulfill its obligation to "give prompt notice of issues controverted in fact or law." *See* §554(b). That is why Rule 1.729(a) allows the complainant to submit five additional interrogatories after receipt of the defendant's answer.¹

B. The Commission has recognized that the counterparties' agreements are relevant evidence in roaming complaints.

In addition to AT&T, the Commission itself has recognized that data roaming agreements presently in effect are pertinent to the resolution of data roaming complaints. In the recent *T-Mobile Declaratory Ruling*, the Wireless Telecommunications Bureau ("WTB") found that existing roaming agreements are relevant reference points for determining commercial reasonableness. *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, DA 14-1865, WT Docket No. 05-265, 2014 FCC LEXIS 4756 (WTB, rel. Dec. 18, 2014), ¶17. The WTB held that other roaming agreements may be relevant to arguments that proffered terms are commercially

¹ WCX still believes that AT&T was actually required to submit these agreements as part of its answer since its "defenses" to WCX's claims relied so heavily on them. WCX filed a Motion to Strike the Answer for this very reason. *See* WCX Motion to Strike, pp. 4-8. The parties reached a joint resolution, so the motion was withdrawn.

reasonable or alternatively that they are not, due to the facts and circumstances of a particular case. *Id.* The same context is presented here.

The WTB explained that the *Data Roaming Order* established an “expansive approach” to determining commercial reasonableness that expressly includes the terms and rates of other agreements. *Id.*, ¶16. Two of the seventeen factors of commercial reasonableness contemplate that other agreements may be relevant to the analysis. *Id.* According to the WTB, “[a]ny other reading of the *Data Roaming Order* would deprive parties of a meaningful opportunity to challenge price terms under the commercially reasonable standard because they would be unable to provide evidence as to such comparative reference points.” *Id.*

The *T-Mobile Declaratory Ruling* further explained that the terms of roaming agreements of third parties can be safeguarded through the “well-established procedures for protecting that information from disclosure in Commission proceedings.” *Id.*, note 50. The WTB cited the Commission’s confidentiality rules and the *Second Protective Order* as the means for protecting third parties’ roaming agreements. *Id.* The counterparties have only stated general concerns that their agreements are irrelevant, a fact with which the Commission, AT&T and WCX all disagree. They have not sufficiently shown why this particular situation merits abandoning the Commission’s standard practice for protecting confidential information. The counterparties’ roaming agreements are relevant to this proceeding, as recognized in the *T-Mobile Declaratory Ruling*, and a full and fair adjudication requires their production.

III. The minimal risk of harm to the counterparties does not outweigh the Commission’s and WCX’s need for production.

Commnet and Cellular Properties also both object to the production of their roaming agreements on the grounds that they could be subjected to great harm. Cellular Properties claims that production of its agreement would give WCX “the potential of a distinct advantage” not

available to other requesting carriers. Cellular Properties Objection, p. 1. Cellular Properties is also concerned that it would be disadvantaged in any future negotiations with WCX. *Id.* Commnet similarly claims that production would give WCX's affiliate Worldcall, Inc. ("Worldcall") a competitive advantage against Choice Communications, LLC in the U.S. Virgin Islands. Commnet Objection, p. 4. Both counterparties contend that the sensitive terms of their agreements will likely be divulged to WCX's competitive decision makers. *Id.*, Cellular Properties Objection, p. 1.

This objection rests on the wholly unsupported premise that WCX will not comply with the protective order and that the Commission would not punish WCX when warranted. Because these agreements will be classified as Highly Confidential Information,² the counterparties could only suffer competitive harm if WCX's counsel or expert breach their obligations under the protective order. This argument is highly speculative and, if accepted, could be used to oppose the production of *any* confidential documents. The risk of a protective order violation is always present, but protective orders are still the best means to protect highly sensitive information, including that of parties not directly involved in the proceeding at hand.

The protective order adopted in this proceeding contains several safeguards that are more than adequate to ensure that the counterparties' roaming agreements are protected as Highly Confidential Information. Only WCX's outside counsel and outside consultant, all of whom are not engaged in competitive decision-making, will obtain access to the agreements. They have all signed an acknowledgement evidencing their understanding of the protective order's provisions,

² The negotiated resolution of WCX's Motion to Strike provides that roaming agreements will be supplied only on a Highly Confidential basis. WCX does retain, and may ultimately exercise, the right to file a separate motion seeking lower classification, or for special relief allowing WCX's principal to review the agreements. But that would occur sometime in the future and require a new motion. If and when WCX does file such a motion then AT&T and the objecting parties will receive notice and the opportunity to contest. Therefore, the sole issue to be decided at present is whether the agreements should be produced pursuant to the Highly Confidential terms in the agreed Protective Order.

all highly confidential information is stamped with a stark identifying legend, and such material must be destroyed at the conclusion of the proceeding. Also, there are severe sanctions and the potential for disbarment from practice before the Commission for noncompliance with the protective order. The counterparties' fear that the protective order will not shield their information is overblown and unsupported.

The protective order already satisfactorily addresses the counterparties' concerns in paragraph 14. If their objections had any true basis, the counterparties could have sought different and even more restrictive protective order terms or sanctions, as expressly allowed by paragraph 19. They made no such request and instead have asked the Commission to forego its well-established practice of allowing limited disclosure under the terms of a protective order.

The Commission has long used protective orders to "provide the benefit of protecting competitively valuable information while permitting limited disclosure for a specific public purpose." *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, 24831 (1998). Protective orders balance "the interests in disclosure and the interests in preserving the confidentiality of competitively sensitive materials[.]" *Id.* In this instance, the Commission must balance the interest of the counterparties in avoiding a highly unlikely violation of the protective order against the public interest that the complaint be litigated with all essential materials available to the parties and the Commission.

These roaming agreements are not of trivial importance. They form the basis of AT&T's primary legal position and constitute critical evidence in this proceeding. Neither WCX nor the Commission will be able to fulfill their responsibilities without a complete record that includes all roaming agreements upon which AT&T relies. WCX "has made a sufficient showing that it

should have access to this information to press its [case] in an informed manner, for the limited purposes of the pending [complaint]” and the Commission should order AT&T to produce each. *See In the Matter of MCI Telecommunications Corp.; On Request for Inspection of Records, FOIA Control No. 84-144*, FCC 85-266, Memorandum Opinion and Order, 1985 FCC LEXIS 3296 *10; 58 Rad. Reg. 2d (P & F) 187 (rel. May 17, 1985) , ¶9, n. 10.

IV. The Commission, as well as WCX, would be harmed and unable to perform its duties if the counterparties’ agreements are withheld.

The Commission is also weakened in its ability to assess AT&T’s position and resolve this case in a fair manner if the counterparties’ agreements are not produced. The Commission does not have access to AT&T’s roaming agreements and it is reliant upon WCX obtaining and evaluating these agreements in order to discover or challenge any pertinence they may have. Self-evaluation by AT&T of its own roaming agreements would be inconsistent with the Commission’s duty to render a judgment based on an examination of the relevant evidence.

A Commission decision rendered on the basis of critical evidence that the Commission has not had an opportunity to examine runs the risk of judicial challenge as unsupported by substantial evidence or as arbitrary and capricious. *Ass’n of Data Processing v. Bd. of Governors*, 745 F.2d 677, 684 (D.C. Cir. 1984); *Air Transport Ass’n v. FAA*, 169 F.3d 1, 7 (D.C. Cir. 1999); *Indep. U.S. Tankers Owners Comm. v. Lewis*, 690 F.2d 908, 926 (D.C. Cir. 1982).

V. All of AT&T’s agreements, in their entirety, must be produced in order for WCX and the Commission to assess AT&T’s claims and defenses.

In order for WCX to exercise its right to confront vital evidence and press its claims in an informed manner, it is critical that AT&T produce the *entirety* of *all* the roaming agreements upon which its Answer relies. AT&T has asserted that these agreements collectively constitute the marketplace for roaming and each is an integral part of the body of evidence that AT&T

claims establishes commercial reasonableness. AT&T has presented an average rate in its Answer, which WCX and the Commission cannot verify without the production of every agreement. *See e.g.*, AT&T Answer, Legal Analysis, p. 4 (“AT&T’s proposed roaming rates represent significant discounts on the average rate AT&T itself pays for data roaming pursuant to its data roaming agreements with other wireless carriers.”). WCX and the Commission would have to accept on faith AT&T’s self-serving description of the average rate if any of the agreements are not produced.

AT&T’s averages are not simple calculations using all aspects of all the agreements.³

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] [BEGIN HIGHLY CONFIDENTIAL]

³ AT&T presents several different “averages.” The third bullet point in Orszag Declaration paragraph 10 sets out each of the different “average” calculations involved: (1) “average effective roaming rates that AT&T pays to other domestic carriers”; (2) “average effective rates in the dozens of commercial agreements AT&T has negotiated since the Commission’s Data Roaming Order”; and (3) “average effective rates negotiated between AT&T and other rural wireless providers.” Orszag also mentions (4) “the average roaming rates T-Mobile has reported.”

[REDACTED]
[REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL]

Another Orszag average is “the weighted average effective rate paid by AT&T for roaming on other providers’ networks.” Orszag Declaration, ¶52. Notice the word “weighted.” WCX must be allowed to assess Orszag’s weighting, and once again that means all agreements he had access to must be produced. Orszag Declaration paragraph 53 describes yet another kind of average: “the average effective rate in agreements AT&T has negotiated since the *Data Roaming Order*.” Orszag claims that “AT&T has executed or amended 25 roaming agreements” since the *Data Roaming Order*. The reference to 25 agreements implies that Orszag is referring to “arms-length” agreements, but one cannot be sure. [BEGIN HIGHLY CONFIDENTIAL]
[REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL]

VI. The already-produced agreements contain important revelations and the withheld agreements may be similar.

AT&T’s answer conveyed a distinct lack of knowledge about machine-to-machine (“M2M”) and the importance of this emerging market. Answer, ¶¶ 6, 8, 81 and 82. The Declarants all minimized the issue. Mr. Meadors, for example, said that AT&T did not mind WCX entering the market, but WCX should not be able to roam on AT&T’s network and support M2M. Meadors Declaration, ¶¶40-41. He also suggested that WCX should obtain “resale” terms if it wanted to use other networks to support M2M. *Id.* The Meadors Declaration

⁷ [BEGIN HIGHLY CONFIDENTIAL]
[REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL]

strongly conveys the impression that AT&T believes M2M roaming should be prohibited, that provisions addressing roaming for M2M devices are entirely inappropriate for a roaming agreement, and any M2M must either be in-home or conducted only via resale.

[BEGIN HIGHLY CONFIDENTIAL]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

VII. Specific response to the allegations contained in the Commnet objection.

Commnet says its agreement with AT&T “addresses *both* voice and data traffic” and is thus irrelevant. Commnet Objection, p. 3. Commnet also makes the factual assertion that WCX’s complaint involves only data roaming on page 1. Commnet’s factual basis for the purported distinction that makes its agreement irrelevant is patently false. WCX’s complaint on its face seeks terms for Rule 20.12(a)(1) and (d) automatic roaming, in addition to and separate from Rule 20.12(e) “roaming for commercial mobile data services.” *See e.g.*, Second Amended Complaint Executive Summary, p. ii, Complaint ¶¶4-5 (pp. 2-3), 18-21 (pp. 9-11), and 41 (p. 20). Therefore, in this respect WCX and Commnet are actually similar and the premise of its objections is incorrect.

Commnet’s representative obviously did not review the Complaint or any of the other pleadings.⁹ They had a duty to do so as part of the “reasonable inquiry” required to certify that

⁸ [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

⁹ Commnet says that it “does not have access to the identity of WCX’s Outside Consultant.” Commnet Objection, p. 2. If they had merely reviewed the Second Amended Complaint then they would have known that WCX has engaged Dr. Roetter since he is named in the Second Amended Complaint, and his Public Declaration is included.

there are “reasonable grounds to support” Commnet’s claims under Commission Rules 1.52 and 1.734(c). Commnet’s counsel violated the rules by not conducting due diligence or, alternatively, Commnet violated Rule 1.17 by providing “material factual information that is incorrect.” Either way there is a violation.

A. Commnet’s assertions that WCX “has constructed nothing” and has an “unbuilt 700 MHz license” are patently and obviously false.

Commnet also makes the patently false claim that WCX “has constructed nothing” related to “its single unbuilt 700 MHz license.” Commnet Objection, p. 1. Once again this factual assertion is wholly incorrect and belied by the pleadings. *See e.g.*, Second Amended Complaint ¶¶23¹⁰, 26¹¹, and 78¹² for just a few examples of the indications in the record that WCX has *not* “constructed nothing.” This too makes it plain that Commnet’s representative did not review the Complaint or any of the other pleadings in order to conduct the “reasonable inquiry” required to certify that there are “reasonable grounds to support” Commnet’s claims under Rules 1.52 and 1.734(c). Commnet’s counsel violated the rules by not conducting due diligence or, alternatively, Commnet violated Rule 1.17 by providing “material factual information that is incorrect.” Either way there is a violation.

This is yet another indication that Commnet failed to do any reasonable inquiry or due diligence. Since Commnet seems so concerned about whether Dr. Roetter is also working with Worldcall, Inc. (something admittedly not revealed by the papers of this case), the answer is no. Dr. Roetter has not performed any outside consulting work for Worldcall, Inc.

¹⁰ “WCX has deployed LTE services in CMA 667 in Band 17.”

¹¹ “WCX spent significant capital over the past two years and has now completed much of its build-out. WCX has surpassed the Commission’s build-out requirements as outlined in Auction 73. The WCX Evolved Packet Core is in place, fourteen radio sites are installed and operational, and WCX is currently providing retail service from ten of them. WCX also has seven additional enodeB units in its staging area.”

¹² “WCX has already exceeded the FCC’s build-out requirements. WCX has therefore already invested in its network.”

B. Commnet's assertions that WCX has violated the Commission's disclosure rules and the instructions to Form 602 by not disclosing overlapping ownership with Worldcall is false. Commnet failed to conduct a reasonable inquiry before it made the allegation.

Commnet and its counsel are not content with making up factual claims belied by the pleadings in the case. Commnet also falsely accuses WCX of violating the ownership disclosure rules. *Id.*, note 1. The specific assertion is that WCX's Form 602 "does not mention the ownership interests of ... WCX shareholders in Worldcall." But once again, Commnet's factual assertion was made without the kind of due diligence or reasonable inquiry that is required before any accusation of a rules violation should be levied by an FCC regulated party or its counsel.

WCX was a wholly-owned subsidiary of Worldcall until 2012. *See* Exhibit 1, CMA 667 License Transfer Application, Ownership Disclosure Representation. The Company was originally in another telecommunications business (switch port leasing). *Id.* In order to do a "capital raise" to obtain funds to build out the 700 MHz area encompassed in for CMA667 – Texas 16 – Burleson, Worldcall company management decided to spin-out WCX as a separate entity without parentage. Worldcall applied for and received approval to transfer the 700 MHz license to WCX in 2012. Each shareowner in Worldcall obtained a percentage ownership (represented in shares) in WCX equal to the percentage ownership the person held in Worldcall, Inc. *See* Exhibits 1, 2, and 3. Thus in 2012, the owners of Worldcall and WCX were the same, and they held equal amounts. The Commission was fully aware of the overlapping ownership because it was expressly disclosed.

Worldcall's summary of Disclosable Interest Holders is Exhibit 4, and WCX's summary of Disclosable Interest Holders is Exhibit 5.¹³ Contrary to Commnet's claim in note 1, the WCX Disclosable Interest Holders that also have a disclosable interest in Worldcall are fully listed in WCX's disclosure. *See* Exhibit 5, listing 7 individuals with WCX stock that also have an interest in Worldcall.

Commnet may be trying to assert a violation based on the fact that two of the Worldcall Disclosable Interest Holders (Brian DeHaven and Soren Telfer) state they have an interest in WCX, but are not in turn listed as Disclosable Interest Holders in WCX's filing. If so they never actually say that. But if this is the actual claim, the explanation is simple, and would have been evident with due diligence. Both Mr. DeHaven and Mr. Telfer own less than 10% of either company. *See* Exhibits 6 and 7. Neither of them were Disclosable Interest Holders in *either Worldcall or WCX* based on ownership percentage. Mr. DeHaven held 2.54% of both companies and Mr. Telfer held 1.76%. *Id.* A duty to disclose for ownership arises only when the ownership is 10% or greater. *See* Form 602 Instructions, p. 1, available at <http://transition.fcc.gov/Forms/Form602/602.pdf>.¹⁴

Mr. DeHaven and Mr. Telfer were disclosed for Worldcall because they were serving in "management" capacity, and were officers and were thus disclosable "indirect" owners without regard to their percent ownership. *See* Form 602 Instructions, p. 5.¹⁵ They were Disclosable

¹³ Commnet's note 1 represents that it conducted a "review of Worldcall's ownership" and makes a direct reference to the WCX disclosure by file name, so it obviously wants the Commission to believe that it actually looked at relevant material.

¹⁴ "[T]he FCC uses FCC Form 602 to obtain information regarding the identity of the real party or parties in interest of the filer and to elicit additional information required by section 1.2112(a) of the Commission's Rules regarding: 1) persons or entities holding a 10% or greater direct or indirect ownership interest in the filer, *see* 47 C.F.R. §1.2112(a)(1); (2) all limited partners whose interest in the filer is 10% or greater, *see* 47 C.F.R. §1.2112(a)(2); (3) all general partners in any general partnership in the filer's chain of ownership, *see* 47 C.F.R. §1.2112(a)(3); and (4) the members of any limited liability corporation whose interest in the filer is 10% or greater, *see* 47 C.F.R. §1.2112(a)(4)." (emphasis added)

¹⁵ "Indirect ownership interest in filer, Key management personnel, Management contract, Officer".

Interest Holders solely because of their officer status; all officers and directors must be listed without regard to ownership share under Rule 1.2112(b)(2)(i). Both of the DeHaven and Telfer Worldcall disclosures expressly state they are “officer” and “key management personnel.” Exhibits 6 and 7. But neither Mr. DeHaven nor Mr. Telfer were ever managers or officers for WCX. If they had been, they would have been disclosed.

Mr. DeHaven and Mr. Telfer are included in the Worldcall disclosure (with a less than 10% interest in both Worldcall and WCX) because they were officers. Their Worldcall officer status – not their ownership interest – is what turned them into Worldcall Disclosable Interest Holders. Neither was included in the WCX disclosure because each had less than 10% ownership of WCX and both were not officers. They were not WCX Disclosable Interest Holders.

This is all evident from the Commission’s ULS documents associated with the two companies. Commnet and its counsel claimed to have reviewed the materials, but obviously did not truly do so, and have now violated Rule 1.17 by providing “material factual information that is incorrect.” Regulated entities and their representatives should engage in proper due diligence and reasonable inquiry before they file pleadings with scurrilous, offensive and unfounded claims about purported rules violations.

C. WCX has not filed this complaint for ulterior purposes.

Commnet’s reckless attacks are wide ranging. It also impugns WCX’s motives in bringing this complaint. *See* Commnet Objection, p. 2 (“Worldcall is selling the two Puerto Rico authorizations (see FCC File No. 0006447466), but has not succeeded in convincing AT&T to purchase either the USVI or the TX-16 licenses. The instant complaint appears to be a part of the shareholders’ strategy of forcing a sale.”). Once again, its allegations are entirely without

any basis. In the first place, it should be obvious that WCX is serious about operating its Texas property, since it has made extensive investments and is expending significant resources prosecuting this case. WCX is not interested in selling the Texas license to AT&T, and hopes it will obtain roaming terms that allow it to remain in the market, vigorously compete and offer exciting services. Worldcall is a separate company, and WCX will not purport to speak on its behalf. Commnet mentions the pending Puerto Rico application, by file number, so one might expect it to have actually reviewed the materials in that proceeding before it makes allegations concerning the case and impugns the motives of anyone involved. The papers in that case provide considerable insight, and expressly belie Commnet's speculation.

In response to a Staff general information request Worldcall explained why it decided to sell the Puerto Rico license rights. *See* Exhibit 8. On page 2 of the redacted response, Worldcall describes "increasing demands for additional equity and cash by the other Worldcall holdings and Worldcall's affiliate Worldcall Interconnect, Inc. (WCX), which is building out its 700 MHz licensed area in Texas." *Id.* In other words, it appears that Worldcall intends to use some of the Puerto Rico proceeds to build out USVI. Given Commnet's visceral positioning and claims, one might fairly infer that Commnet's real motive is that it wants to frustrate Worldcall's eventual market entry in USVI by any means, including unscrupulous means.

The Worldcall response also speaks to WCX's capital needs. "These factors, coupled with the Worldcall investors' desire to trade spectrum for capital that could then be used for WCX, led to the decision to put these specific licenses up for sale." *Id.* The papers in the Puerto Rico transfer proceeding (expressly mentioned in Commnet's Objection on page 2) completely rebut Commnet's notions about motive, because they demonstrate a desire to keep and build out

both USVI (by Worldcall) and Texas (by WCX) rather than Commnet's idea about a goal of forcing a sale of either or both to AT&T.

D. Speculations about WCX counsel's future actions are unfounded and assume a violation of the protective order will occur.

Commnet was not content with smearing Worldcall and WCX. They felt compelled to also personally attack WCX's counsel with an assertion he would violate paragraph 11 of the protective order by using protected information for prohibited purposes,¹⁶ as part of his representation of a different, albeit affiliated, client. Commnet Objection, p. 4. They even go so far as to assert that counsel might "be obligated" to violate the protective order "given the duty an attorney has to his client." *Id.*

No ethics rule regarding an attorney's duty to any client ever requires a protective order violation of the sort imagined by Commnet. To the contrary. The fact that Commnet would even suggest as much demonstrates that its objection is frivolous on its face.

VIII. AT&T should be ordered to produce the [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] roaming agreement.

AT&T has additionally withheld production of the [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] roaming agreement without good cause. In consideration of WCX withdrawing its Motion to Strike, AT&T agreed to produce all of the roaming agreements it has relied upon in its Answer, subject to the resolution of any objections from counterparties. Agreed Order, ¶¶5-6. AT&T has now declined to produce its roaming agreement with [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] because the company "may no longer be in business." *See* Email

¹⁶ Protective order paragraph 11 states that Confidential and Highly Confidential information "shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding." The hypothetical on page 4 would be a "use" even though – as they admit – it would not be a "disclosure." Thus the hypothetical would in fact *not* represent a situation where counsel "honors the letter of the Protective Order by declining to provide the contents of the Commnet Agreement."

of Emily Watkins, Jan. 12, 2015. Although AT&T “does not object to the production of the [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] it will now only do so “if so ordered by the Commission.” *Id.*

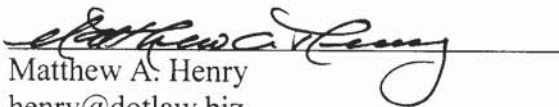
The Agreed Order does not authorize AT&T to decline to produce a relevant roaming agreement simply because AT&T cannot contact a counterparty or establish whether it is in business. By not maintaining a current contact with AT&T or the Commission, this carrier has functionally waived its right to contest the production of its agreement. It is not the responsibility of either AT&T or the Commission to act on [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] behalf when the carrier has rendered itself unreachable. AT&T has relied upon this agreement in its Answer and WCX has a right to confront vital evidence. The Commission and the parties have an important interest in adjudicating this complaint with a complete record and that interest would be frustrated if relevant materials would go unproduced due to a third party’s silence. WCX requests that AT&T be ordered to produce the [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [REDACTED] [END HIGHLY CONFIDENTIAL] roaming agreement along with those of the other counterparties.

IX. Conclusion

For the reasons stated herein, WCX respectfully requests that the objections be denied. AT&T should be ordered to produce all remaining roaming agreements, subject to the Highly Confidential provisions in the Protective Order.

January 16, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew A. Henry", is written over a horizontal line.

Matthew A. Henry

henry@dotlaw.biz

W. Scott McCollough

wsmc@dotlaw.biz

McCollough|Henry PC

1250 S. Capital of Texas Hwy, Bldg 2-235

West Lake Hills, TX 78746

Tel: 512.888.1114

Fax: 512.692.2522

Counsel for Worldcall Interconnect, Inc.

Certificate of Service

I hereby certify that on January 16, 2015, I caused a copy of the foregoing to be served on the following as indicated below:

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554
Via Electronic Filing

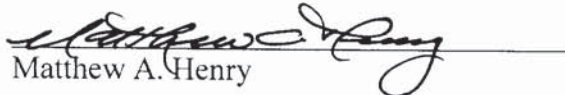
David J. Kaufman
Rini O'Neil, PC
1200 New Hampshire Ave. N.W., Ste 600
Washington, D.C. 20036
Via Email

Timothy E. Welch
Hill & Welch
1000 Connecticut Ave., N.W. #1025
Washington, D.C. 20036
Via Email

Edward King
28 Towne Centre
Danville, IL 61832
Via Email

Lisa Saks
Lisa Boehley
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554
Via Email

James F. Bendernagel, Jr.
David L. Lawson
Paul Zidlicky
Thomas E. Ross.
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
Via Email


Matthew A. Henry

WCX RESPONSE TO COUNTERPARTIES' OBJECTIONS

EXHIBIT 1

Exhibit 1 - CMA 667 License Transfer Application Ownership Disclosure Representation

Ownership Disclosure Representation

In July 2012, Worldcall Inc completed a spin-off of its previously 100%-owned subsidiary, Worldcall Interconnect Inc. With the completion of the spin-off, Worldcall Interconnect Inc. is now an independent company owned directly by the same shareholders and in the same ownership percentages that those shareholders have in Worldcall Inc. Accordingly, no change in the effective ownership or control has resulted from the spin-off. As the second step in the spin-off and the reason for this Form 603 filing, Worldcall Inc. is trying to complete the assignment of just one license (call sign WQJZ320 for CMA 667, Texas 16 - Burleson) to Worldcall Interconnect Inc. With regard to the license assignment requested in this Form 603, we represent that no change of control will have occurred, that same effective ownership will exist between the assignor and the assignee and that nothing has given rise to effect the bidding discounts Worldcall Inc. received and is still entitled to from Auction 73. The purpose of the spin-off was to facilitate a capital raise necessary for the build-out of LTE facilities in the license area being assigned.

WCX RESPONSE TO COUNTERPARTIES' OBJECTIONS

EXHIBIT 2

Exhibit 2 - License Transfer Application Main Screen


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ULS Application

0005383645 - Worldcall Interconnect Inc.

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MAIN	ADMIN	TRANS LOG	ASSIGNMENTS	LICENSES	DESIGNATED ENTITY	REVENUE
------	-------	-----------	-------------	----------	-------------------	---------

File Number	0005383645	Application Status	M - Consummated
-------------	------------	--------------------	-----------------

General Information

Application Purpose	AA - Assignment of Authorization		
Receipt Date	09/07/2012		
Entered Date	09/07/2012	Action Date	04/05/2013
Waiver	No	Number of Rules	
Attachments	Yes		
Application Fee Exempt	No	Waiver/Deferral Fee	No

Assignor Information

FRN	0017164179 (View Ownership Filing)	Type	Corporation
Name	Worldcall Inc. ATTN Lowell Feldman 1250 S Capital of Texas Hwy Bldg 2-235 West Lake Hills, TX 78746		P:(512)888-2311 F:(877)733-1492 E:lowell.feldman@gmail.com
Race		Gender	
Ethnicity			

Assignor Contact Information

Name	Worldcall Inc. Lowell P Feldman ATTN Lowell Feldman 1250 S Capital of Texas Hwy Bldg 2-235 West Lake Hills, TX 78746	P:(512)888-2311 F:(877)733-1492 E:lowell.feldman@gmail.com
------	---	--

Assignee Information

FRN	0017249558 (View Ownership)	Type	Corporation
-----	--	------	-------------

Name	Worldcall Interconnect Inc. ATTN Rich Lewis 1250 S Capital of Texas Hwy Bldg 2-235 West Lake Hills, TX 78746	P:(512)888-2313 F:(877)733-1492 E:rlewis@worldcall.net
------	--	--

Real Party In Interest	Worldcall Interconnect Inc.	FRN of Real Party in Interest	0017249558
Race		Gender	
Ethnicity			

Assignee Contact Information

Name	Worldcall Interconnect Inc. Rich Lewis ATTN Rich Lewis 1250 S Capital of Texas Hwy Bldg 2-235 West Lake Hills, TX 78746	P:(512)888-2313 F:(877)733-1492 E:rlewis@worldcall.net
------	--	--

Assignee Qualifications and Ownership Information

Alien Ownership

The Applicant answered "No" to each of the [Alien Ownership](#) questions.

Basic Qualifications

The Applicant answered "No" to each of the [Basic Qualification](#) questions.

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Basic Search	<div style="display: flex; align-items: center;"> <div style="border: 1px solid black; padding: 2px;">By File Number</div> <div style="border: 1px solid black; width: 100px; height: 20px; margin: 0 5px;"></div> <div style="background-color: #4a7ebb; color: white; padding: 2px 10px; border-radius: 3px; cursor: pointer;">SEARCH</div> </div>

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WCX RESPONSE TO COUNTERPARTIES' OBJECTIONS

EXHIBIT 3

Exhibit 3 - License Transfer Application Admin Screen



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MAIN	ADMIN	TRANS LOG	ASSIGNMENTS	LICENSES	DESIGNATED ENTITY	REVENUE
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File Number	0005383645	Application Status	M - Consummated
-------------	------------	--------------------	-----------------

General Information

Mode	Interactive	PFR Status
VEC/Coordinator/COLEM		
Auction ID		Source
Change Type		Overall Change Type

Assignor Signature

Signature Information	Lowell P Feldman	Title	CEO
-----------------------	------------------	-------	-----

Assignee Signature

Signature Information	Lowell P Feldman	Title	CEO
-----------------------	------------------	-------	-----

Comments

Description	Date
None	

History

Date	Event
04/10/2013	Action PN Generated
04/05/2013	Authorization Printed
04/05/2013	Redlight Review Completed

[All History](#) (18)

Attachments

Type	Description	Date Entered
Ownership	Ownership Disclosure Representation	09/05/2012

Pleadings

Pleading Type	Description	Date Entered
None		

Letters

Letters Type	Description	Date Entered
None		

Automated Letters

Reference Number	Call Sign	Letter Type	Date Generated
5530909 -- Licensee 5530909 -- Contact		Consummation Reminder Letter	01/27/2013

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WCX RESPONSE TO COUNTERPARTIES' OBJECTIONS

EXHIBIT 4

Exhibit 4 - Worldcall Summary of Disclosable Interest Holders

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Filing Type Current

File Number 0003694429

☐ Filer Name

Worldcall Inc.

☐ Contact Name & Address

Worldcall Inc

1250 S. Capital of Texas Hwy., Bldg. 2, Ste. 235

Austin, TX 78746

ATTN Richard M. Lewis

P: (512)888-2313

F: (512)692-2522

E: rlewis@worldcall.net☐ Cellular Cross Interest☐ FCC Regulated Businesses of this Filer: 2FCC Regulated Business: [UTEX Communications Corporation](#)FCC Regulated Business: [Worldcall Interconnect Inc.](#)☐ Disclosable Interest Holders of this Filer: 8[View All](#)Disclosable Interest Holder: [Brian DeHaven](#)

There are 2 FCC Regulated Businesses held by this Disclosable Interest Holder

[FCC Regulated Business: UTEX Communications Corporation](#)FCC Regulated Business: [Worldcall Interconnect Inc.](#)Disclosable Interest Holder: [Arthur S Feldman](#)

There are 2 FCC Regulated Businesses held by this Disclosable Interest Holder

[FCC Regulated Business: UTEX Communications Corporation](#)FCC Regulated Business: [Worldcall Interconnect Inc.](#)Disclosable Interest Holder: [Bernard Feldman](#)

There are 2 FCC Regulated Businesses held by this Disclosable Interest Holder

[FCC Regulated Business: UTEX Communications Corporation](#)FCC Regulated Business: [Worldcall Interconnect Inc.](#)☐ Attachment: 1Attachment: [Indirect Ownership, Explanation of Lowell Feldman indirect ownership for 602, 04/01/2008](#)

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EXHIBIT 5

Exhibit 5 - WCX Summary of Disclosable Interest Holders

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Ownership Disclosure Filing

[Return to Search Results](#)**Filing Type** Current**File Number** 0005379472☐ **Filer Name****Worldcall Interconnect Inc.**☐ **Contact Name & Address****Lowell P Feldman****P: (512)888-2311****Worldcall Interconnect Inc.****F: (877)733-1492****1250 S Capital of Texas Hwy Bldg 2-235****E: lowell.feldman@gmail.com****West Lake Hills, TX 78746****ATTN Lowell Feldman**☐ **Cellular Cross Interest**[Return to Summary](#)☐ **Disclosable Interest Holders of this Filer: 6****Disclosable Interest Holder: [Arthur Feldman](#)**

There are 1 FCC Regulated Businesses held by this Disclosable Interest Holder

FCC Regulated Business: [Worldcall Inc.](#)**Disclosable Interest Holder: [Bernard Feldman](#)**

There are 1 FCC Regulated Businesses held by this Disclosable Interest Holder

FCC Regulated Business: [Worldcall Inc.](#)**Disclosable Interest Holder: [James M Feldman](#)**

There are 1 FCC Regulated Businesses held by this Disclosable Interest Holder

FCC Regulated Business: [Worldcall Inc.](#)**Disclosable Interest Holder: [Lowell Feldman](#)**

There are 1 FCC Regulated Businesses held by this Disclosable Interest Holder

FCC Regulated Business: [Worldcall Inc.](#)

Disclosable Interest Holder: [Rich Lewis](#)

There are 1 FCC Regulated Businesses held by this Disclosable Interest Holder

► **FCC Regulated Business:** [Worldcall Inc.](#)

Disclosable Interest Holder: [Gary Nekula](#)

There are 1 FCC Regulated Businesses held by this Disclosable Interest Holder

► **FCC Regulated Business:** [Worldcall Inc.](#)

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Filer: Worldcall Inc.

File Number: 0003694429**Filing Type: Current**

There are 2 FCC Regulated Businesses associated with this Disclosable Interest Holder.

Disclosable Interest Holder Name and Type

Disclosable Interest Holder Name: **Brian DeHaven**Entity Type: **Individual**FRN: **0017617192**

Disclosable Interest Holder Address

Address: **191 N. Hazelcrest Circle**City: **The Woodlands**State: **TX**Zip Code: **77382**

Type of Interest in Filer

Direct Ownership Interest in Filer**Officer****Key Management Personnel**

Type of Ownership Interest in Filer

Common Stock: Voting

Disclosable Interest Held in Filer

Percent of Interest Held in Filer: **2.54 %**Country of Citizenship: **United States**[Return to Summary](#)

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WCX RESPONSE TO COUNTERPARTIES' OBJECTIONS

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Filer: Worldcall Inc.

File Number: 0003694429**Filing Type: Current**

There are 2 FCC Regulated Businesses associated with this Disclosable Interest Holder.

Disclosable Interest Holder Name and Type

Disclosable Interest Holder Name: **Soren Telfer**Entity Type: **Individual**FRN: **0017617259**

Disclosable Interest Holder Address

Address: **8 Lois Court**City: **Ann Arbor**State: **MI**Zip Code: **48103**

Type of Interest in Filer

Direct Ownership Interest in Filer

Officer**Key Management Personnel**

Type of Ownership Interest in Filer

Common Stock: Voting

Disclosable Interest Held in Filer

Percent of Interest Held in Filer: **1.76 %**Country of Citizenship: **United States**[Return to Summary](#)**ULS Help**[ULS Glossary](#) - [FAQ](#) - [Online Help](#) - [Technical Support](#) - [Licensing Support](#)

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WCX RESPONSE TO COUNTERPARTIES' OBJECTIONS

EXHIBIT 8

Worldcall, Inc.

Lowell Feldman
Chief Executive Officer

1250 South Capital of Texas Highway
Building 2-235
West Lake Hills, Texas 78746

512.777.7703 (V)
512.692.2522 (FAX)

December 15, 2014

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20054

RE: *Application of AT&T Mobility Puerto Rico Inc. and Worldcall, Inc. for Consent To Assign Licenses*, WT Docket No. 14-206; Worldcall, Inc. Response to General Information Request

Dear Ms. Dortch:

The Wireless Telecommunications Bureau directed a "General Information Request" to Worldcall, Inc. ("Worldcall") in relation to the above-captioned transaction and application. We are providing Worldcall's response under this cover letter.

Request for Confidential Treatment.

Some of the responsive information is confidential. As allowed by the Joint Protective Order we are designating a portion of the narrative and two documents as Confidential. The public filing has the Confidential information redacted.

The Confidential material contains confidential trade secrets, commercial information or other confidential information that is not routinely made available for public inspection. Specifically, the documents that have been redacted are two contracts between Worldcall and Mazer Telecom Advisors, the company Worldcall hired to assist in marketing and selling the license in issue. The narrative answers contain the names of certain entities in Puerto Rico with whom Worldcall attempted to negotiate for certain services prior to the decision to sell, and characterizations of the negotiations and results. As explained below, this material and information should be afforded confidential treatment under both 47 C.F.R. § 0.457(d) and § 0.459.

In accordance with Section 0.459(b) and in support of its request, Worldcall provides the following information:

(1) Identification of Confidential Materials: The Confidential information relates to potential and actual vendors and the terms of two contracts. The information in the narrative response is identified as Confidential when it appears within the submission, and the contracts have been marked as required by the Joint Protective Order to state "CONFIDENTIAL INFORMATION – SUBJECT TO JOINT PROTECTIVE ORDER IN WT DOCKET NO. 14-206 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION."

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(2) Identification of the Circumstances Giving Rise to the Submission: The information is being supplied as part of a response to the Wireless Telecommunications Bureau December 4, 2014 General Information Request directed to Worldcall.

(3) Degree to Which the Information is Commercial or Financial: The Confidential information is commercial. It relates contract terms for one vendor and characterizes certain negotiations that occurred with potential vendors. This is not the type of information that Worldcall would make publicly available in the ordinary course of business.

(4) Degree to Which the Information Concerns a Service Subject to Competition: The Confidential information is related to the provision of mobile wireless services. The mobile wireless industry is highly competitive.

(5) How Disclosure of the Information Could Result in Substantial Competitive Harm: Disclosure of the Confidential information could result in substantial competitive harm to Worldcall and the vendors. Competitors could use this commercially sensitive information, while preserving the confidentiality of their own comparable information, to seek to establish a competitive advantage.

(6) Measures Taken to Prevent Disclosure: Worldcall has previously kept this information non-public. The Confidential information has been redacted from the Public version of the Response.

(7) Public Availability and Third Party Disclosure: The designated information has not been made available to the public and has not been provided to third parties except pursuant to a confidentiality agreement.

(8) Justification of the Requested Duration of Non-Disclosure: The designated information should never be released for public inspection. It contains commercially sensitive information that Worldcall and the other vendors do not make publicly available in the ordinary course of business, and the disclosure of the information could adversely affect their competitive position.

(9) Additional Information: Consistent with the provisions of the protective order adopted by the Commission in this proceeding, Worldcall is filing a copy of the Response from which all Confidential information has been redacted and which may be made public. The Confidential version should be treated as confidential pursuant to the Commission's rules and not subject to public inspection.

For the foregoing reasons, Worldcall requests that the designated information be treated as Confidential pursuant to the Commission's rules and not subject to public inspection. A public version of the Response will be uploaded through the Commission's Electronic Comment Filing System.

Thank you for your attention to this matter.

Marlene H. Dortch
Federal Communications Commission

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Sincerely,

A handwritten signature in dark ink, appearing to read "Lowell Feldman", is positioned above the printed name.

Lowell Feldman
Chief Executive Officer
Worldcall, Inc.

Copies to:

Scott Patrick (Public and Confidential version via email; two hard copies of Confidential)
Mobility Division

Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 6313
Washington, D.C. 20554
scott.patrick@fcc.gov
(202) 418-2853

Kate Matraives (Public version via email)
catherine.matraives@fcc.gov

Jim Bird (Public version via email)
TransactionTeam@fcc.gov

**General Information Request
Regarding the AT&T/Worldcall Transaction
Question for Worldcall
WT Docket No. 14-206
December 4, 2014
REDACTED – FOR PUBLIC INSPECTION**

REQUEST:

1. Explain in detail the decision made by Worldcall to assign the Lower 700 MHz B Block spectrum that is the subject of this application to AT&T, including any attempts made to enter into a sale of this spectrum or alternative arrangements with parties other than AT&T.

ANSWER:

Worldcall conducted an analysis of what it would take to build-out and operate the licensed area as initially planned by Worldcall when it acquired the licenses in FCC Auction 73. Worldcall sought a partner or investor that could provide locally-based communications facilities such as towers and backhaul, tried to locate people with expertise to handle local mid-level management of the network deployment and looked for companies or personnel in the area for marketing and sales.

Worldcall initially tried to work with [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. In December of 2012, after months of communications, Worldcall received a preliminary proposal for collocation, and some transport necessary to begin deployment within the licensed areas. After the initial quotes were received, several follow-up phone conversations ensued including conversations about what potential tower locations could be supported using the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] infrastructure. During the Spring of 2013 Worldcall's CEO went to Puerto Rico and spent quite some time arranging multiple meetings in the attempting to solidify the necessary business relationships and initiate the build-out.

During this period the CEO of Worldcall met with an operator of a former CLEC and the current operator of a neighboring ILEC and gained a fresh perspective of the potential regional issues related to constructing and operating a network. In particular, he determined that [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] could not be a viable partner for Wordcall. Worldcall's CEO then spent several days investigating individual "municipalities"¹ within the licensed area trying to identify potential cell tower rental sites, new tower locations, backhaul transmission sources, and potential business partners for marketing and sales.

After returning from the area in the Spring of 2013 and conferring with the other Worldcall stakeholders, the CEO determined in the late Spring of 2013 that the licenses owned by Worldcall in Puerto Rico would be difficult to deploy due to lack of a sustainable business plan. This was partially due to the local conditions, but these only compounded the difficulties that have plagued implementation efforts by other small, regional and rural 700 MHz B-Block licensees throughout the United States.

¹ Puerto Rico does not have "counties" like states; its local government is entirely organized around "municipalities" that contain one or more "barrios." Despite the name a "municipality" will often encompass rural and high-cost areas.

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Worldcall ultimately determined it was in its best interest to sell its Puerto Rico licenses based on the following factors:

- (1) The present scarcity of useable Band 17 devices that would allow full use of all capabilities desired by potential customers;²
- (2) The difficulty small providers face obtaining reasonable nationwide rates and terms for automatic roaming and commercial mobile data service roaming;
- (3) As a result of (1) and (2) Worldcall would have significant difficulty building a customer base and establishing brand recognition. Puerto Rico local conditions magnify the problem, particularly if Worldcall could not team with established and accepted local entities who understand and have connections to the local culture and politics;
- (4) Capital markets presently require a relatively high level of both short and long term certainty before debt or equity investment in the mobile services market;
- (5) The increasing demands for additional equity and cash by the other Worldcall holdings and Worldcall's affiliate Worldcall Interconnect, Inc. (WCX), which is building out its 700 MHz licensed area in Texas.

These factors, coupled with the Worldcall investors' desire to trade spectrum for capital that could then be used for WCX, led to the decision to put these specific licenses up for sale.

In late April of 2013, Worldcall engaged Mazer Telecom Advisors to market and sell the Puerto Rico licenses. See Confidential Attachment 1. [BEGIN CONFIDENTIAL]

[REDACTED] [END
CONFIDENTIAL]. Worldcall's engagement with Mazer then expired.

In 2014 Worldcall once again made it known to several companies that it would be willing to sell all or part of, or partner with others for, its remaining un-built Puerto Rico licenses. None of these companies showed interest. AT&T did express an interest so Worldcall re-engaged Mazer in August and negotiated the current license sale which is subject to this request. See Confidential Attachment 2. Each time Worldcall engaged Mazer, it relied on Mazer's expertise to solicit and obtain the best price in the marketplace.

Mazer widely marketed the licenses in 2013 and had follow-up conversations with three companies, but none of those demonstrated a serious interest. AT&T was interested, and in the late summer of 2014 Worldcall and AT&T negotiated a fair market price with reasonable terms and the transaction is now up for approval.

²The Commission should be well-aware of this problem given submissions by many other lower 700 MHz licensees in other proceedings. If more information is required Worldcall will supplement and further explain upon request.

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CONFIDENTIAL DOCUMENTS (PAGES 3-16) REDACTED